TESTIMONY OF
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ON BEHALF OF THE

ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

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Good afternoon, Mr. Chairman and members of the Subcommittee. I am Michael Clifford, Director of Systems Planning Applications for the National Capital Region Transportation Planning Board, the Metropolitan Planning Organization (MPO) for the Washington, DC region. I am testifying today on behalf of the Association of Metropolitan Planning Organizations (AMPO), of which my MPO is an active member, and in particular as a member of AMPO's Air Quality Work Group.

AMPO is a national association of MPOs with membership from 200 metropolitan areas in the country. In nonattainment and maintenance areas, MPOs have primary responsibility for ensuring that transportation plans and programs do their fair share to achieve and maintain the federal air quality standards and protect the health of our citizens.

Accordingly, we are pleased to have this opportunity to provide our perspective regarding the conformity provisions contained in H.R. 3, and I thank you and the members of the Subcommittee for holding this hearing.

I would like to begin by saying that we support the changes to the transportation conformity program in the Clean Air Act as proposed in Section 1824 of H.R. 3. The changes would allow MPOs to better utilize resources and, therefore, to better conduct metropolitan planning, while continuing to work with air quality agencies to improve air quality in the nation's metropolitan areas.

First, AMPO wholeheartedly supports the proposal that conformity of transportation plans and programs be determined every 4 years in nonattainment and maintenance areas. Currently, MPOs in nonattainment

and maintenance areas must demonstrate conformity of plans every three years and transportation improvement programs (TIPs) every two years.

Because conformity must be determined before new TIPs or new plans are adopted, many areas, including here in the Washington, DC region, begin a TIP update at about the same time as conformity requirements are met for the previous one. When you also consider that a conformity determination is often triggered by a TIP or Plan amendment, or a state implementation plan (SIP) trigger, the reality is that a continuous conformity process is in place in many metro areas. Many MPOs, especially high-growth areas like this region, report to AMPO that they budget for at least one conformity determination per year.

For example, the North Central Texas Council of Governments (NCTCOG) in the Dallas-Fort Worth area performs one conformity analysis per year because of TxDOT's transportation plan and TIP modifications. The Southeastern Wisconsin Regional Planning Commission (SWRPC) in the Milwaukee area performed four conformity determinations in the 2003-3004 timeframe.

What can be expected to improve by this change to a four-year frequency schedule is the ability of planners to focus on issues just as important to metropolitan areas as air quality. It is not simply technical staff time that is required for a conformity determination. Conformity also requires numerous interagency consultation meetings, public hearings, and the full engagement of MPO board members. MPOs must choose where to focus their limited planning resources, and elected MPO board members must choose where to focus their available time.

AMPO members believe that long- and short-term transportation planning will improve if metropolitan areas have more time to devote to it, rather than continuously determining conformity as many now do. A

strengthened planning process could evolve when the concern about short-term deadlines for conformity is lessened.

This has been borne out at AMPO meetings, where MPOs in areas without conformity requirements and areas where conformity is not a frequent activity report that they are freer, from a resource perspective, to undertake activities such as scenario planning, enhanced public participation, and other innovative measures, than are MPOs conducting conformity every year.

The changes proposed in H.R. 3 will not negatively affect local air quality, because conformity must still be determined before an updated plan or TIP is adopted; air quality impacts will still be analyzed before any major changes to the transportation network are made, and a new SIP motor vehicle emissions budget would still trigger a conformity determination.

Secondly, AMPO supports the proposed change to provide a two year timeframe for redetermining conformity after an adequacy finding or approval of a motor vehicle emissions budget in a state implementation plan. This represents an additional six months beyond the current 18 month requirement, thus allowing more time for MPOs to integrate conformity determinations with the proposed four year frequency cycle I just addressed.

SIP updates occur on a discretionary basis, rather than on a regular cycle as do transportation plans and TIPs. Because of that, conformity triggers are unpredictable. The current 18-month SIP trigger requirement has caused uncertainty in the transportation planning and TIP development processes. The additional six months in your bill would improve the process by removing some of the pressure to demonstrate conformity in a short amount of time. It would also provide a measure of certainty in the period after SIPs are due for the new 8-hour ozone and fine particulate standards, which will begin in 2007. These SIPs will establish the first motor vehicle emissions budgets under those new standards.

Third, AMPO applauds the provisions in H.R. 3 that would change the time horizons for conformity determinations so that air quality and transportation planning timeframes are more similar. Under the current requirements, conformity must be demonstrated for the last year of the transportation plan, which is at least 20 years from the date of analysis. In contrast, SIPs are focused on a shorter-term attainment date and do not have to forecast emissions and trends to any time beyond that point.

For many 8-hour ozone nonattainment areas, for example, the attainment year, and thus the last year of analysis in the SIP, will be 2010. After an area reaches attainment, a maintenance plan must be developed and put in place that looks forward for a period of just 10 years. In contrast, conformity determinations being done today forecast transportation-related emissions until at least 2025.

Because transportation agencies need to demonstrate conformity at least 20 years out to the last year of the plan, transportation sources are constrained to the SIP's motor vehicle emissions budget from the attainment year to the last year of the transportation plan, unless the SIP specifically establishes emissions budgets for years after the attainment date. In practice, few SIPs do this.

The mismatch in the timeframes for transportation and air quality plans has placed a burden on the transportation sector where there are very few emission controls remaining for implementation that will yield notable emissions reductions. This is especially true as vehicles continue to get cleaner due to the phase-in of federal emission and fuel standards. In 20 years, each mile of travel from a given vehicle will be cleaner, but this also means that each mile of travel reduced will result in a much smaller emission benefit. Longer-term emission problems will require solutions from every emission sector, and the way to ensure they are all looked at is to harmonize the planning timeframes so that all sources of emissions are on the table, not just the transportation sector.

The provisions in H.R. 3 would tie these two planning horizons much more closely together. The conformity determination would look forward *at least* 10 years from the first year of the TIP or plan timeframe, and even further if a regionally significant project will not be completed until after that time. These provisions would still ensure that transportation investments do not cause or contribute to air quality violations. And because the proposal calls for conducting a regional emissions analysis for any years of the transportation plan that extend beyond this timeframe, planners will have advance notice if future transportation demand results in emissions that are likely to worsen air quality.

Fourth, I would like to emphasize AMPO's support for the transportation control measure (TCM) substitution provisions in the bill. The conformity regulations require that MPOs implement in a timely manner any TCMs identified in the SIP. If a particular TCM fails to advance on schedule or perform as intended, revising, adding, or substituting a new TCM currently requires a formal SIP revision, with its attendant time requirements of development and EPA approval. This time period would typically be a minimum of 12 months.

AMPO supports the language in the Bill that would allow MPOs, working with air quality agencies and EPA, to revise or substitute new TCMs with equivalent emission reductions, and timeframes for those reductions, without a formal SIP revision.

Our desire for this change stems from the fact that transportation agencies are extremely reluctant to use TCMs now. This is because the success of many TCMs is dependent upon changes in human behavior and other variables beyond the MPO's influence; for other TCMs, funding that allows timely implementation may fail to materialize. If the emission reductions fail to accrue as predicted, the MPO is liable.

For example, the Metropolitan Transportation Commission (MTC) in the San Francisco Bay Area was sued in 2001 for a TCM that was included in its 1982 SIP, but not amended or revised to reflect current conditions. The court held that, even though MTC was not taking emission credit for the TCM, it is obligated to implement the measure regardless of changed circumstances. The suit was eventually concluded more in favor of MTC, but the resultant delays impeded both the transportation planning and air quality planning processes. Other MPOs are understandably reluctant to agree to TCMs for this very reason.

The Bill would provide for a more efficient and timely TCM substitution process, which would provide MPOs with more assurances that TCMs are a viable emission reduction strategy to use in the SIP.

Lastly, I wish to express my support for the language that provides a formal definition of a conformity lapse. AMPO prefers this statutory definition as it removes ambiguity that might leave discretion to EPA or the courts, and uneven application across the country.

In conclusion, I believe these conformity provisions would more closely align the air quality and transportation planning processes, resulting in better transportation planning, fewer delays, and continued progress toward meeting our clean air goals.

Thank you for your time and the opportunity to speak before this Subcommittee.